

the Secretary of Transportation, the Secretary of the Department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purpose for which such land or materials have been reserved, they may be appropriated and transferred to the state for such purposes. When the need for such land or material ceases to exist, they shall revert to the control of the department. This section applies only to projects constructed on a Federal-aid system, or under the provisions of chapter 2 of title 23 U.S.C. Usually applications for highway rights-of-way or the use of borrow material made under this Act by the Federal Highway Administration, Department of Transportation, on behalf of a particular state can be and are more simply satisfied by the issuance of a road easement or a license to take borrow material. This latter procedure is also desirable in that controls necessary to satisfy military requirements may be retained. Title 23 U.S.C. 107(d) directs Federal agencies to cooperate with the Secretary of Transportation in providing rights-of-way, including control of access, for the interstate highway system over lands and interests in lands owned by the United States.

**§ 644.422 Authorized widening of a public highway, street, or alley.**

40 U.S.C. 345c authorizes the conveyance, upon application, of such interest in real property as is determined will not be adverse to the interests of the United States, to the states or political subdivisions for authorized widening of a public highway, street, or alley. The conveyance may be made with or without consideration, and subject to terms and conditions deemed necessary to protect the interests of the United States. Excepted from this authority is the conveyance of any interest in real property that can be transferred under title 23 of the United States Code (see § 644.421), and to public lands in the National Forest System.

**§ 644.423 Airport development.**

(a) *Authority.* 49 U.S.C. 1723 provides that

(a) . . . whenever the Secretary of Transportation determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace. (b) Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department, or agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall at the option of the Secretary, revert to the United States.

(b) *Approval.* The requirement for approval by the President was waived by Executive Order 12079 dated 18 September 1978. The Attorney General delegated his authority to approve to the Assistant Attorney General, Land and Natural Resources Division, by § 0.67 of title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 22, 1971: 36 FR 20428). The instrument of conveyance must cite authority for the waiver and the delegation as shown in the suggested format of deed in ER 405-1-12.

(c) *Requirements for Conveyance Instrument.* Under authority delegated by the Secretary of Transportation to the Federal Aviation Administration (FAA), when the Administrator of the FAA requests a conveyance from a military department, the instrument of conveyance requires the following provisions as covenants running with the land, binding the grantee, its successors and assigns.

(1) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with the National Airport System Plan the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(2) That the airport, and its appurtenant areas and its buildings and facilities, whether or not the land is conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, religion, age, sex, handicap or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

(3) That the grantee will not grant or permit any exclusive right forbidden by section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

(4) That the grantee agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, religion, age, sex, handicap or national origin.

(5) That the grantee agrees to comply with all requirements imposed by or pursuant to part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR part 21)—non-discrimination in federally assisted programs of the Department of Trans-

portation—effectuation of title IV of the Civil Rights Act of 1964.

(6) That in furtherance of the policy of the FAA under this covenant, the grantee:

(i) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(ii) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before 17 July 1962 at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(iii) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(7) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

(8) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may,